

# Exhibit D

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**Before the  
FEDERAL COMMUNICATIONS COMMISSION  
Washington, D.C. 20554**

In the Matter of	)	
	)	
Petition of ACS of Anchorage, Inc. Pursuant to	)	
Section 10 of the Communications Act of 1934, as	)	WC Docket No. 05-281
Amended, for Forbearance from Sections 251(c)(3)	)	
And 252(d)(1) in the Anchorage LEC Study Area	)	

**REPLY STATEMENT OF THOMAS R. MEADE**

**Summary**

1. The purpose of this statement is to respond to the arguments by General Communication, Inc. ("GCI") opposing forbearance. The first section discusses the facilities-based competition that exists throughout the Anchorage study area in all product markets. The second part addresses the flaws in GCI's economic feasibility analysis. The third and final section responds to GCI's arguments about whether ACS will continue to offer wholesale services at just, reasonable, and non-discriminatory rates.

**GCI's Opposition demonstrates the significant competition it provides in the Anchorage market.**

2. As the largest telecommunications provider in Anchorage, GCI has established its own extensive network. According to GCI, its cable network, over which it provides broadband and telephony in addition to video service, currently reaches 90% of residential customers in

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Alaska with cable modem service,<sup>1</sup> and will pass 98% of home in Anchorage.<sup>2</sup> In addition, GCI owns copper facilities in certain subdivisions in Elmendorf, in which it has exclusive facilities.

3. GCI has long been an interexchange carrier in Anchorage, and thus, has extensive fiber facilities within the study area. GCI first entered the long distance market in 1982 and is now one of the two predominant long distance carriers in the market. As illustrated in GCI's fiber map, GCI also has fiber facilities that run through the densely populated areas in Anchorage, and that appear to be particularly extensive in the large business districts within the Central and North wire center boundaries.<sup>3</sup>

4. GCI's UNE entry strategy in the Anchorage market has proven extremely successful. GCI now serves [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] of the market.<sup>4</sup> GCI has shown that it has the current ability to economically serve all but [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] of its own customers over its own facilities, without any recourse to UNEs or wholesale services from ACS,<sup>5</sup> and that it continues to decrease its reliance on UNEs. ACS estimates that as of January 31, 2006, GCI has approximately 41,370 access lines served using ACS's UNEs. This is an [BEGIN CONFIDENTIAL] [END

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<sup>1</sup> Press Release, General Communication, Inc., GCI Reports First Quarter 2005 Financial Results (May 4, 2005), available at <http://www.gci.com/investors/gciq12005.pdf>.

<sup>2</sup> *Opposition of General Communication, Inc. to the Petition for Forbearance from Sections 251(c)(3) and 252(d)(1) of the Communications Act Filed by ACS of Anchorage*, WC Docket No. 05-281, at 36 n.146 ("GCI Opposition").

<sup>3</sup> Declaration of Blaine Brown, GCI Opposition, at Exhibit BB1, attached thereto as Exhibit J.

<sup>4</sup> Declaration of William P. Zarakas, GCI Opposition, at Exhibit III, attached thereto as Exhibit C ("Zarakas Decl.").

<sup>5</sup> Zarakas Decl. at Exhibit I.

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**CONFIDENTIAL]** reduction from the number of such lines GCI reported for November 2005, and a 19% reduction from the number ACS estimated in its Forbearance Petition.

5. GCI's continued access to UNEs allows it to exploit an arbitrage opportunity to the detriment of the users of ACS's legacy network. GCI has the option to use UNEs at regulated prices instead of investing in its own facilities, while ACS's continuing obligation to provide UNEs creates a disincentive for ACS to invest in facilities. Indeed, capital spending for the Anchorage study area has decreased from \$27.1 million in 1998<sup>6</sup> to \$13.2 million in 2004.<sup>7</sup>

6. GCI has the ability to serve almost all of its residential customers over its cable telephony network. GCI's deployment of cable telephony could be made even more rapidly and at lower cost once it implements its customer-powered MTA units. GCI representatives have indicated to me that GCI actively is exploring the use of customer-powered units and already is testing this technology in the field.

7. GCI also has demonstrated its ability to serve business customers on demand in Anchorage. GCI, by its own estimate, now serves about **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of the enterprise market. More importantly, GCI estimates that it could "economically" serve **[BEGIN CONFIDENTIAL] [END CONFIDENTIAL]** of GCI's current retail switched medium and large business lines on its own facilities.<sup>8</sup>

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<sup>6</sup> Alaska Communications Systems, Inc., *Annual Report*, Schedule B-1 at 2 (filed April 3, 1999).

<sup>7</sup> ACS of Anchorage, Inc., *Annual Report*, Schedule B-1 at 2 (filed May 31, 2005).

<sup>8</sup> Zarakas Decl. at Exhibit I.

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**GCI's economic feasibility analysis, conducted by William Zarakas, is based on distorted characterizations of ACS's and GCI's market shares and incorrectly evaluates build-out on an incremental rather than aggregate basis.**

8. Although Mr. Zarakas's projections illustrate that GCI does not need to rely on ACS's UNEs to serve a substantial number of its customers, his calculations are based on retail line numbers that artificially inflate ACS's retail line counts, and on narrowed wire center definitions, which gives the appearance that GCI can serve a lower percentage of customers on its own facilities than it actually serves. Specifically:

- GCI includes in ACS's retail access line count the lines ACS resells on a wholesale basis to Alascom and TelAlaska for total service resale by those competitors to their customers. Therefore, GCI's calculation of ACS's share of the switched local exchange voice market is higher than it should be on Exhibits I and III.
- In its calculation of non-switched DS-1 circuits, GCI includes in ACS's retail DS-1 circuits, voice-grade circuits, and DSL lines. However, GCI does not appear to include voice grade circuits, GCI-provisioned DSL, or cable modem bandwidth in calculating its retail DS-1 equivalency. Therefore, GCI presents a mismatched comparison that overstates GCI's percentage of the market that it cannot serve using its own facilities.
- GCI misleadingly designates O'Malley and Rabbit Creek as separate wire centers when they are, in fact, merely remote locations where GCI has elected to collocate its facilities to gain access to ACS's loops. The areas served by these remotes are part of ACS's South wire center service area. GCI's depiction of the South wire center includes only the densely populated area of the actual South wire center service area.

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GCI carves out as separate “markets” the less densely populated Rabbit Creek and O’Malley areas, which have fewer customers overall and less revenue potential; in these areas GCI apparently has determined it is more cost effective to serve a higher percentage of its customers over ACS’s UNEs than to build out its facilities. By GCI’s own estimation, most of its customers in these less densely populated areas are “near” its cable plant, so GCI’s ability to serve these customers is not the issue.<sup>9</sup>

- GCI’s representation of business and residential access lines for the East wire center also are distorted because GCI does not include in the line count for this wire center its access lines in the developments in Elmendorf, where it is the exclusive facilities-based local exchange carrier.

9. The crux of GCI’s argument as to why it cannot serve more customers over its own facilities is that in some areas, it is uneconomic to build out its facilities and thus, it chooses not to do so. ACS agrees that O’Malley, Rabbit Creek, Girdwood, Hope and Indian, are difficult to serve, and facilities deployment to these areas costs more than in more densely populated parts of the study area. Due to study area-wide averaging, ACS sells its services to many customers in these areas below ACS’s costs, however, this is the nature of the local exchange service business. Rates are averaged over the entire study area, and costs are recovered through service to the study area as a whole. GCI, however, wants to avoid the higher cost of serving these areas without forgoing the associated revenue opportunity. It looks at costs and profits on an

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<sup>9</sup> See Zarakas Decl. at Exhibits V, VI (O’Malley: [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] business and [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] residential are near cable facilities; Rabbit Creek: [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] business and [BEGIN CONFIDENTIAL] [END CONFIDENTIAL] residential are near cable facilities).

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incremental, or per customer, basis.<sup>10</sup> Thus, GCI's arguments are based on the assumption that GCI should be entitled to use UNEs in any instances where its facilities investment would not yield profits on an incremental basis.<sup>11</sup>

**ACS will continue to negotiate with GCI to offer UNEs at reasonable rates.**

10. ACS has publicly stated its intent to negotiate access to UNEs even after forbearance is granted. ACS has significant incentives to negotiate with GCI, both to maintain the revenue that ACS receives from leasing its network elements and to negotiate access to GCI's exclusive facilities. Contrary to GCI's assertions in its Opposition, ACS has demonstrated its willingness to negotiate with GCI and provide access to ACS's UNEs at a fair price.

11. GCI mischaracterizes the path leading to UNE negotiations in Juneau and Fairbanks. ACS was in no way forced to negotiate. Instead, it was GCI who was forced to the negotiating table after the Alaska Supreme Court issued a decision which found that the RCA should reexamine whether ACS's rural exemption should be reinstated in Fairbanks and Juneau.<sup>12</sup> Only under the threat of losing access to ACS's network altogether, and with the Governor's Office of the State of Alaska facilitating an agreement, did GCI agree to settle the rate dispute before the RCA.

12. GCI also mischaracterizes ACS's willingness to negotiate UNE rates for Anchorage. Significant progress toward a settlement had been made between the CEOs of both companies during July and August of 2003 for Anchorage as well as Fairbanks and Juneau.

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<sup>10</sup> See *id.* at ¶ 26.

<sup>11</sup> See, e.g., GCI Opposition at 75.

<sup>12</sup> See *ACS of Alaska, Inc. v. Regulatory Comm'n of Alaska*, 81 P.3d 292 (Alaska 2003).

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GCI's CEO had offered ACS of Anchorage a UNE loop rate increase from \$14.92 phased up to \$17.00 before GCI changed course and submitted testimony to the RCA on August 29, 2003 that the RCA should reduce the loop rate to \$7.08. The RCA subsequently granted ACS a UNE loop rate of \$18.64 per month. By the time the parties actually negotiated UNE rates for Fairbanks and Juneau in April of 2004, there was no longer a "prospect of a lengthy and highly contested arbitration proceeding"<sup>13</sup> in Anchorage. The RCA's Anchorage arbitration hearings occurred in November 2003 and in 2004 the parties were merely awaiting a ruling. At that point, ACS would have had no incentive to negotiate a lower UNE rate with GCI. There is no basis for GCI's argument that ACS would not negotiate access to UNEs if forbearance were granted.

13. GCI raises the long-settled dispute regarding delays in ACS's provisioning of UNEs to argue that it has a strong enough incentive even with the availability of UNEs to transition its customers to its cable telephony platform as quickly as possible.<sup>14</sup> The parties negotiated and agreed to an acceptable level of provisioning.<sup>15</sup> Moreover, ACS was ready to enter into an automated provisioning arrangement with GCI. However, after lengthy and costly negotiations, GCI decided not to spend the money necessary for it to enter into this arrangement.

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<sup>13</sup> See GCI Opposition at 41.

<sup>14</sup> See Borland Decl. at ¶ 13.

<sup>15</sup> FCC Letter Ruling, *Gen. Commc'n, Inc. d/b/a GCI v. ACS of Anchorage, Inc. d/b/a Alaska Commc'ns Sys., ACS Local Service, and ACS; ACS of Fairbanks, Inc. d/b/a Alaska Commc'ns Sys., ACS Local Service, and ACS; and ACS of Alaska, Inc. d/b/a Alaska Commc'ns Systems, ACS Local Service, and ACS*, File No. EB-03-MDIC-0104 (Dec. 20, 1994) (dismissing GCI's claims with prejudice because the parties agreed to settle).



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Respectfully submitted,

/s/ Thomas R. Meade

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